



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1995

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR95-709

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32082.

The City of Irving (the "city") received a request for copies of the personnel files of two former police officers. You have released a portion of the requested records but assert that some of the requested information implicates employees' privacy rights. You claim that the information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. You have submitted a representative sample of the requested information which you believe is excepted from public disclosure.

The city claims that certain health, psychological, and insurance information contained in questionnaires regarding police applicants is confidential pursuant to the Americans with Disabilities Act of 1990. We have severed the questionnaires from the present open records request, because this issue warrants a more thorough analysis than is normally possible in the limited scope of an informal letter. Currently, there is an open records decision pending in our office, RQ# 753, which we believe will be dispositive of this issue. Therefore, we are awaiting the issuance of this decision prior to issuing a ruling pertaining to the questionnaires. That portion of your request which will determine whether the questionnaires should be released or are excepted from disclosure has been assigned ID# 33723. Our ruling here does *not* address the request for questionnaires regarding police applicants. You may withhold the questionnaires until such time as this office issues its decision regarding those particular documents. Gov't Code § 552.303.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that social security numbers are protected from public disclosure pursuant to federal law. A social security number may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), in certain cases. In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We caution, however, that an employer may be required to obtain an employee's social security number under laws that predate October 1, 1990; a social security number obtained under a law that predates October 1, 1990, is not made confidential by the 1990 amendments to the Social Security Act. Based on the information that you have provided, we are unable to determine whether the social security numbers contained in the submitted documents are confidential under federal law. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990. We note, however, that hiring an individual after October 1, 1990, is not the same as obtaining an individual's social security number pursuant to a law enacted on or after October 1, 1990.

For information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information ... is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Section 552.102 excepts:

(a) . . . information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

(b) . . . a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under statutory predecessor to § 552.102 was same as that delineated in *Industrial Found.* for statutory predecessor to § 552.101). Accordingly, we will consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102 together.

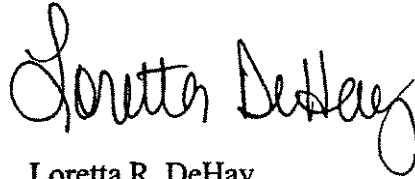
The scope of public employee privacy is very narrow. See Attorney General Opinion JM-229 (1984); Open Records Decision Nos. 423 (1984), 421 (1984), 400 (1983), 336 (1982). Information regarding a public employee's relationship with his public employer does not generally constitute his *private* affairs. Open Records Decision No. 470 (1987). Although information relating to an investigation of a public employee may be embarrassing, the public generally has a legitimate interest in knowing about the job performance of public employees. See Open Records Decision Nos. 444 (1986), 405 (1983), 400 (1983). Similarly, information regarding a public employee's dismissal, demotion, promotion, or resignation is not excepted from public disclosure. See Open Records Decision No. 444 (1986) at 4; see also Open Records Decision No. 230 (1979) (concluding that predecessor to § 552.102 did not except from public disclosure investigative report regarding allegations of misuse of school district employees and materials).

The submitted documents contain very basic information about the affected officers. There is a legitimate public interest in the information in the records including the department in which an employee works, position, salary classification, rank, salary rate, change in salary rate, reason for rate change, and effective date of rate change. Moreover, the documents submitted for our review do not contain intimate and embarrassing information. Therefore, you may not withhold the information pursuant to common-law privacy in conjunction with sections 552.101 and 552.102 of the Government Code.

One submitted document contains the home address of an officer. Section 552.117(1)(B) of the Government Code requires that you withhold this information. Open Records Decision No. 532 (1989), 530 (1989).

In summary, except as noted above, you must release the requested information. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Loretta R. DeHay". The signature is fluid and cursive, with the first name "Loretta" being more prominent than the last name "DeHay".

Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LMM/rho

Ref.: ID# 32082

Enclosures: Submitted documents

cc: Mr. Steve Elwonger
3611 Casa Verde, #228
Dallas, Texas 75234
(w/o enclosures)